



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** International Shelter Systems, Inc.

**File:** B-245466

**Date:** January 8, 1992

James D. Bachman, Esq., and Scott W. Woehr, Esq., Doyle & Bachman, for the protester.  
Ann L. Giddings, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.  
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Bidder's hand delivery of a facsimile copy of a bid modification is not a facsimile submission and thus is not precluded by the prohibition against facsimile submissions in the invitation for bids.
2. Bidder's submission of a bid modification in the form of a photocopy of a facsimile of a signed letter satisfies the requirement for a signed bid document because the copy submitted serves as a duplicate of the original document and evidences the signer's intent to be bound by the obligation created by the bid modification.
3. A bidder's failure to enclose a bid modification in a sealed envelope with the specified number of copies and its hand delivery of the modification to the bid opening official instead of the bid depository box as required by the invitation for bids do not require rejection of the bid, since there is no prejudice to the other bidders.

### DECISION

International Shelter Systems, Inc. protests the award of a contract to Southern Structures, Inc. under invitation for bids (IFB) No. N62477-91-B-0246, issued by the Department of the Navy, Naval Facilities Engineering Command, for the lease-to-ownership of modular trailer units to be located at the Naval Surface Warfare Center, Dahlgren, Virginia.

We deny the protest.

Both Southern Structures and International Shelter submitted bids by the 2:00 p.m., August 26, 1991, bid opening. International Shelter's bid was \$1,302,052 while Southern Structures's original bid was \$1,373,768. In addition, prior to bid opening, Southern Structures facsimiled a signed bid modification to a local agent with instructions to hand deliver the document to the Navy. The agent photocopied the modification and hand delivered the photocopy to a bid opening official 20 minutes before the time designated for bid opening. The modification decreased Southern Structures's bid price by \$93,124, which made its modified bid price low at \$1,280,644. The Navy made award to Southern Structures at its modified bid price.

International Shelter argues that the award should be terminated and award made to International Shelter because Southern Structures's modified bid was a facsimile submission prohibited by the IFB. The IFB incorporated by reference Federal Acquisition Regulation (FAR) § 52.214-5, which states in pertinent part that: "[f]acsimile bids, modifications, or withdrawals will not be considered unless authorized by the solicitation." The IFB did not authorize facsimile bids, modifications, or withdrawals.

FAR defines a facsimile submission as one "that is transmitted to and received by the Government via electronic equipment . . ." FAR § 52.214-31(a). Thus, a facsimile submission does not occur when a non-governmental party hand delivers a facsimile bid document to the government. Tomahawk Constr. Co., B-243582, Aug. 7, 1991, 91-2 CPD ¶ 137. Accordingly, Southern Structures's hand delivery of a facsimile copy of a bid document is not a "facsimile submission" prohibited by the IFB.

Alternatively, International Shelter argues that, since Southern Structures's bid modification was only a copy with no original signature, the modification should be treated as an unsigned bid modification and rejected. It is true that a bid, or bid modification,<sup>1</sup> that does not contain an original signature is considered unsigned and, as a general rule, must be rejected as nonresponsive because the bidder would not be obligated upon the government's acceptance of

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<sup>1</sup>The same rules apply to bid modifications as to bids, since the modification is in essence a new bid. Jennings Int'l Corp., 68 Comp. Gen. 79 (1988), 88-2 CPD ¶ 472.

the bid.<sup>2</sup> Tomahawk Constr. Co., supra. We do not consider Southern Structures's bid modification to be unsigned.

The original bid modification from Southern Structures was signed by an authorized official and then reproduced by the facsimile and photocopy processes before it was submitted in its reproduced form. A photocopy of a signed bid document is binding as a duplicate of the original signed document; such a signature prevents the bidder from disavowing its obligations under the signed document. Cambridge Marine Indus., Inc., B-202965, 61 Comp. Gen. 187, 81-2 CPD ¶ 517. A facsimile reproduction is, in essence, the same as a photocopy reproduction.<sup>3</sup> Thus, a facsimile copy of a signed bid document is binding as a duplicate of that signed bid document. See Jennings Int'l Corp., supra (facsimile copy of a signed modification would have satisfied the signature requirement); Cambridge Marine Indus., Inc., supra. Photocopying the facsimile copy does not destroy its character as evidence of the original signed document and the signer's intent to be bound because, in essence, it is also a duplicate of the signed bid modification. Therefore, Southern Structures's bid modification was binding as a duplicate of the original signed document and bound the bidder to its lower modified bid price. Accordingly, the Navy properly accepted Southern Structures's bid modification as responsive.

International Shelter also argues that Southern Structures failed to submit the modification in accordance with the IFB's prescribed submission procedures and Southern Structures's bid should therefore be rejected. International Shelter notes that Southern Structures submitted its bid modification without: (1) a sealed and labeled envelope;<sup>4</sup> (2) including an original and two copies

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<sup>2</sup>FAR § 14.405(c) requires rejection of unsigned bids and provides only two exceptions to this general rule. The exceptions are for unsigned bids accompanied by other material showing bidder's intent to be bound by the unsigned bid, and for bids containing formally authorized substitutes for signatures in the form of rubber stamped, typewritten or printed inscriptions.

<sup>3</sup>The mechanical means of reproduction is different, but the end result in both processes is a duplicate of the original.

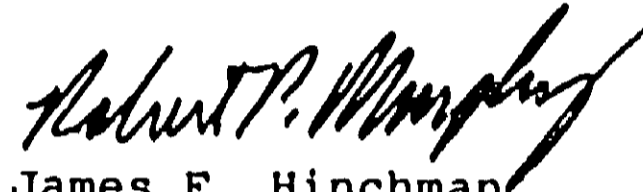
<sup>4</sup>FAR § 52.214-5, incorporated in the IFB at part IV, section L.9, states that bid modifications shall be submitted in sealed envelopes, addressed to the office specified in the IFB, and showing the bidder's name, address, the IFB number, and the time specified for receipt.

as required by the IFB; and (3) depositing the hand delivered bid modification in the bid depository box as required by the IFB.<sup>5</sup>

None of these irregularities were significant or prejudicial to the other bidders. Specifically, the IFB requirement for a specified number of bid copies is not material. FAR § 14.405(a). Also, a bidder's failure to comply with sealed envelope requirement may be waived where, as here, no other bidders are exposed to the bid prior to the opening and there is otherwise no prejudice to the other bidders. Rhodes Constr. Co., Inc., B-242992, June 11, 1991, 91-1 CPD ¶ 561. Finally, a bidder's hand delivery of a bid directly to the bid opening official prior to the time for opening is acceptable, even where the IFB requires hand delivered bids to be delivered to a bid depository box. Hyster Co., B-182995, 55 Comp. Gen. 267 (1975), 75-2 CPD ¶ 176.

Accordingly, the Navy acted properly in accepting Southern Structures's bid modification and making award to that firm.

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>5</sup>The IFB stated that hand delivered bids should be received in a depository at an address different from the mailing address. Southern Structures's agent hand delivered the bid modification directly to the bid opening official and not to the bid depository.